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**OF THE**  
**SUPREME COURT OF NEW JERSEY**

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April 22, 2021

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: **In the Matter of Russell F. Anderson, Jr.**  
Docket No. DRB 20-319  
District Docket Nos. XIV-2018-0497E and XIV-2019-0471E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a reprimand for respondent's violations of RPC 1.15(a) (two instances – failure to safeguard funds and negligent misappropriation of client funds); RPC 1.15(b) (failure to promptly deliver client funds); and RPC 1.15(d) (numerous instances – failure to comply with the recordkeeping provisions of R. 1:21-6).

At the relevant times, respondent and his law firm, Honig Anderson, Attorneys at Law (the firm), maintained attorney trust accounts and attorney business accounts at three different banks. The Valley National Bank attorney trust account (ATA) and attorney business account (ABA) will be referred to as ATA1 and ABA1; the Freedom Bank accounts, ATA2 and ABA2; and the ConnectOne Bank accounts, ATA3 and ABA3.

In April 2017, respondent represented 16 Arrow Road Associates in the sale of a commercial building. After respondent's firm had received the buyer's \$220,000 in earnest money, which respondent deposited in ATA1, he failed to properly account for a \$2,500 ATA1 check issued to Brennan Environmental. Thus, when respondent subsequently wired \$220,000 to Arrow Road from ATA1, rather than \$217,500, he negligently misappropriated and, consequently, failed to safeguard, \$2,500 in unrelated client funds in ATA1, in violation of RPC 1.15(a). Respondent

replenished the funds following the overdraft.

Similarly, in October 2018, respondent represented Eduardo and Danielle Sinson in the sale of a property. Respondent failed to record the buyer's \$50,000 deposit, which he deposited in ATA1. Thus, when he subsequently wired \$477,345.34 to the Sinsons from ATA3, an amount that purported to include the \$50,000 deposit in ATA1, respondent negligently misappropriated and, consequently, failed to safeguard, \$50,000 in unrelated client funds in ATA3, again in violation of RPC 1.15(a). Respondent also replenished those funds.

In January 2018, Laura Rufo sold her primary residence to Christopher and Donna Datino, whom respondent represented. At the closing, respondent withheld \$60,000 from Rufo, pursuant to the terms of an escrow agreement between the parties. According to the agreement, the funds were withheld for the "sole purpose of installing a new septic system."

On February 6, 2018, respondent received \$60,000 from PICS Title Agency LLC and deposited it in ATA2, in accordance with the escrow agreement between Rufo and the Datinos. Between March 14 and April 3, 2018, respondent made five disbursements to Perfection Excavating, LLC, totaling \$28,425 "related to the terms of the escrow agreement," leaving an escrow balance of \$31,575.

On April 2, 2018, the septic system replacement was finished, at which time Rufo made numerous telephone calls and sent multiple e-mails to respondent, seeking the return of the balance of the escrow funds. On April 7, 2018, the Township of Wyckoff provided respondent with a final certification. Perfection Excavating confirmed that it completed the work and had been paid in full.

On April 11, 2018, respondent informed Rufo that, on the Datinos' instruction, he was withholding \$7,000 of the remaining escrow funds for a new boiler, even though the escrow agreement did not authorize this action. Respondent ignored Rufo's counsel's repeated requests for the release of the \$31,575 in remaining escrow funds. Thus, on May 21, 2018, Rufo retained new counsel, Giovanni Regina, Esq., whose requests respondent also ignored.

On June 19, 2018, Regina filed a civil complaint on Rufo's behalf against respondent and the Datinos, seeking the release of the escrow balance. On July 24, 2018, Rufo voluntarily dismissed the lawsuit.

On June 24, 2018, Rufo filed a grievance against respondent. In his written reply, respondent stated that, after the closing, "an unforeseeable issue arose with the boiler" in Rufo's former home. Consequently, the Datinos instructed him to hold \$7,000 for the replacement of the boiler. When Rufo sued respondent and his clients, he informed them that, if his withholding the \$7,000 was determined to be wrongful, they may be liable for attorney's fees and other costs. At that point, the Datinos authorized respondent to release the remaining funds.

On June 29, 2018, respondent issued ATA2 check number 1187, in the amount of \$31,575, payable to Rufo, which she negotiated on July 6, 2018. At that point, the entire \$60,000 in escrow

funds had been properly disbursed.

Respondent stated that he did not use any portion of the escrowed funds, except to provide his clients “a remedy for actions or inactions taken.” Respondent’s failure to promptly disburse the remaining \$24,575 in escrow funds to Rufo violated RPC 1.15(b).

In addition to the above misconduct, respondent violated several provisions of R. 1:21-6, the recordkeeping Rule, and, thus, violated RPC 1.15(d). Specifically, the OAE determined that one or more of respondent’s ATA and ABA statements contained improperly image-processed checks, a violation of R. 1:21-6(b). Although respondent succeeded in having the violation corrected in respect of the ABA, the ATA statements remained in violation of this provision of the Rule.

In addition, on August 9, 2018, a bank withdrew \$1,167.88 from ATA1 and applied the funds to the firm’s credit line. R. 1:21-6(c)(2) prohibits cash withdrawals from an attorney’s ATA and, thus, by virtue of the bank’s withdrawal, respondent violated this provision of the Rule. Respondent eventually reversed the withdrawal.

Furthermore, the OAE uncovered five client ledger cards with debit balances, contrary to R. 1:21-6(d). These negative balances resulted from sloppy recordkeeping practices (the David; Lee; and Poskanzer matters); a simple error in writing a check (the Seigel matter); and disbursing against uncollected funds, which were never received by the firm (the Scavone matter). Respondent replenished the negative balances in four matters. In the Scavone matter, respondent rectified the shortage by withholding \$75,000 from the proceeds of sale disbursed to Scavone after the closing in the sale to a second buyer.

Finally, eighteen client ledger cards for the firm reflected inactive balances for at least six months, in violation of R. 1:21-6(d). Specifically, in seven matters, the balances represented the firm’s attorney’s fees and costs. As to the eleven remaining matters, in which the firm held funds for its clients, respondent resolved four by issuing checks to clients Attianese; Taylor; Estate of Brown; and Norris, all of whom cashed them.

As of December 31, 2019, respondent continued to maintain, in ATA2, a total of \$154,168.71 for clients Wolf (\$86,168.71); Terranova (\$40,000); Finizia (\$23,500); Collier (\$2,000); and Clement (\$2,500). As of the same date, he continued to maintain, in ATA1, \$1,000 for his client Levinsohn and \$15 for Daly.

Between December 31, 2019 and February 20, 2020, respondent disbursed \$1,000 to Levinsohn; \$40,000 to Terranova; and \$2,400 to Wolf. Thus, as of February 20, 2020, he maintained \$111,768.71 in ATA2 in behalf of the following clients: Wolf (\$83,768.71); Finizia (\$23,500); Collier (\$2,000); and Clement (\$42,500). As stated previously, the status of Daly’s \$15 is unknown.

The OAE and respondent further stipulated, in mitigation, respondent’s contrition and remorse; unidentified subsequent remedial measures he has since taken; and his unblemished disciplinary history. The parties stipulated that there were no aggravating factors.

Based on the above facts, the Board determined that respondent's misconduct violated RPC 1.15(a) (two instances); RPC 1.15(b); and RPC 1.15(d) (numerous instances).

Generally, a reprimand is imposed for recordkeeping deficiencies that result in the negligent misappropriation of client funds. *See, e.g., In re Mitnick*, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; violations of RPC 1.15(a), and RPC 1.15(d); significant mitigation included the attorney's lack of prior discipline in a thirty-five-year legal career) and *In re Rihacek*, 230 N.J. 458 (2017) (attorney was guilty of negligent misappropriation of client funds held in his trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years).

In isolation, cases involving an attorney's failure to promptly deliver funds to clients or third persons, in violation of RPC 1.15(b), usually results in the imposition of an admonition or reprimand, depending on the circumstances. *See, e.g., In the Matter of Jeffrey S. Lender*, 11-368 (January 30, 2012) (admonition; in a "South Jersey" style real estate closing in which both parties opted not to be represented by a personal attorney in the transaction, the attorney inadvertently overdisbursed a real estate commission, neglecting to deduct from his payment an \$18,500 deposit for the transaction; he then failed to rectify the error for over five months after the overdisbursement was brought to his attention; violations of RPC 1.3 and RPC 1.15(b); the attorney had no prior discipline); *In the Matter of Raymond Armour*, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (admonition imposed on attorney who, in three personal injury matters, neither promptly notified his clients of his receipt of settlement funds nor promptly disbursed their share of the funds; the attorney also failed to promptly communicate with the clients; the Board considered that the attorney had no prior discipline); and *In re Dorian*, 176 N.J. 124 (2003) (reprimand imposed on attorney who failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities; attorney previously was admonished for gross neglect, failure to communicate, failure to withdraw, and failure to cooperate with disciplinary authorities, and reprimanded for gross neglect, lack of diligence, and failure to communicate).

Based on precedent, respondent's single violation of RPC 1.15(b) warrants only an admonition, and, thus, would not serve to enhance the reprimand for his negligent misappropriation and recordkeeping violations. Similarly, given the number of violations, the mitigating factors do not justify downgrading the reprimand to an admonition.

In deciding this matter, the Board considered the funds that remained in ATA2, as of February 20, 2020, for the following clients: Wolf (\$83,768.71); Finizia (\$23,500); Collier (\$2,000); Clement (\$42,500); and, possibly, Daly (\$15). The Board, thus, determined to direct respondent to provide to OAE proof of proper disbursement of those sums within sixty days of the Court's disciplinary Order in this matter. Alternatively, in the event that respondent is not able to locate one or more of those parties, those sums should be deposited with the Superior Court Trust Fund Unit, within sixty days of the date of the Court's disciplinary Order in this matter.

Enclosed are the following documents:

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1. Notice of motion for discipline by consent, dated October 30, 2020 (redacted).
2. Notice of motion for discipline by consent, dated October 30, 2020 (confidential)
2. Stipulation of discipline by consent, dated November 4, 2020.
3. Affidavit of consent, dated November 2, 2020.
4. Ethics history, dated April 22, 2021.

Very truly yours,



Johanna Barba Jones  
Chief Counsel

JBj/jm

Enclosures

- c: (w/o enclosures)  
Hon. Maurice J. Gallipoli, A.S.J.C. (Ret.), Chair  
Disciplinary Review Board (e-mail)  
Charles Centinaro, Director  
Office of Attorney Ethics (e-mail and interoffice mail)  
Isabel K. McGinty, Statewide Ethics Coordinator  
Office of Attorney Ethics (e-mail and interoffice mail)  
Russell F. Anderson, Jr., Respondent (e-mail and regular mail)  
Laura Rufo, Grievant (regular mail)